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刑事诉讼关键证人出庭作证制度探讨

Research on the Criminal Litigation System of Key Witnesses  
to Testify in Court

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## 内容摘要

当前，证人出庭难、出庭率低、质证效果差等一直成为我国刑事诉讼证人出庭作证制度倍受诟病的现象，也成为各界呼吁证人出庭、完善证人出庭制度的依据。对这个问题，本论文回归证人出庭问题之本源，即“刑事证人是否都要出庭作证”，以此为切入点，对我国证人出庭问题进行研究探讨。

本论文共分为六章。第一章解决“刑事证人是否都要出庭”这一本源问题。通过分析当前在证人出庭认识上存在的一些误区，澄清现有法律并未要求所有证人出庭、国外也未有此要求及实践等问题，同时结合我国司法现状，提出刑事案件中所有证人出庭既无必要、也不现实。解决证人出庭的问题重点在于探索有必要出庭的关键证人制度。第二章，从有利于维护与实现法律公正、缓解证人出庭与司法资源的矛盾、规范统一司法实践，从实现公正与效率的统一等方面，论证了实行刑事诉讼关键证人出庭制度的意义。第三章，针对 2012 年新刑诉法中对应当出庭的关键证人范围界定模糊，容易存在选择性执行的问题，提出立法应对关键证人的范围予以较为明确的规制，才能保证这一制度不至于成为立法者的“一厢情愿”。第四章，根据现有法律规定，对保障关键证人出庭的操作程序作了细化与设计，包括证人出庭作证的提出、决定、证人通知、庭前准备、作证程序、退庭程序。第五章，从关键证人的角度，省视证人的出庭“顾虑”，进而建议完善关键证人出庭作证的配套制度，如健全证人保护、证人出庭经济补偿制度。第六章，从司法机关如何应对关键证人出庭制度的挑战为出发点，提出司法机关应改变执法司法理念，在实践中执行好关键证人出庭制度，解决证人出庭难题，努力实现实体与程序公正的统一。

**关键词：**证人；关键证人；出庭作证

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## ABSTRACT

. At present, it has been a criticized phenomenon that it is hard for the attendance of witnesses, with low appearance and inferior cross-examination, etc., for the criminal litigation system of witnesses to testify in court in our country, which becomes the cause of appealing to attendance of witnesses and perfecting the system from all walks of life. On this issue, back to the origin of the problem of attendance of witnesses, in this paper it puts forward "whether the criminal witnesses ought to appear in court to testify".As a breakthrough point, studies the problems of the witnesses to appear in court in our country.

This thesis is divided into six chapters. In Chapter One, puts forward "whether the criminal witnesses ought to appear in court to testify", and analyzes some misunderstandings in the current cognition of attendance of witnesses. According to the judicial status quo in China, all the witnesses to appear in court in the criminal case neither necessary nor practical. Solve the problem of the witness to appear in court focus is to explore the necessary system of key witnesses to appear in court. In Chapter Two, it analyzes the significance of the criminal litigation system of key witnesses to testify, from the maintenance and realization of legal justice, the contradiction alleviation between the witnesses to appear in court and the judicial resources, standardization of unified judicial practice, and the unity realization of justice and efficiency. In Chapter Three, it makes a research on the core content of the criminal litigation system of key witnesses to testify in court—the definition of key witnesses' condition based on the revision of the regulations about key witnesses to appear in court in the Criminal Procedure Law in 2012. In Chapter Four, According to the existing law, it designs the program of key witnesses to testify in court , including proposal, decision and witness notification, preparation, and the program to testify and leave of witnesses to testify. In Chapter Five, from the angle of the key witnesses to appear in court, it exams the "concern" of witnesses to appear in court, and then

suggests perfecting the supporting systems of perfecting the system of key witnesses to testify in court, such as to improve witness protection and economic compensation system of the witnesses to appear in court. In Chapter Six, from how to reply the challenges of the key witnesses to appear in court for judicial offices as a starting point, it puts forward judicial offices should change law enforcement and judicial philosophy with good execution to the system of key witnesses to appear in court. Through constant practice, to solve the problem for witnesses hard to appear in court , trying to achieve the unity of entity and procedure justice.

**Key Words:** The witness; Key witness; Appear in court as a witness

# 目 录

前 言.....	1
第一章 问题的提出——刑事证人是否都要出庭作证? .....	2
第一节 我国刑事证人出庭现状.....	2
第二节 证人出庭现状认识误区.....	3
一、在法律认识上的误区.....	3
二、在出庭率认识上的误区.....	4
三、在诉讼规则认识上的误区.....	4
第三节 我国司法资源的现实束缚 .....	5
第二章 实行刑事诉讼关键证人出庭制度的意义.....	6
第一节 关键证人出庭制度的现实意义.....	6
一、有利于维护与实现法律公正.....	6
二、解决证人出庭与司法资源之间的矛盾.....	7
三、规范、统一司法实践.....	7
第二节 关键证人出庭制度的理论意义.....	8
一、追求公正与效率的统一.....	8
二、推动法治秩序构建.....	8
第三章 刑事诉讼关键证人出庭的范围及例外情形分析.....	10
第一节 关键证人在刑诉法中的体现 .....	10
一、关键证人的条件设定较模糊，其决定权过多依赖于法院的自由裁量权 .....	10
二、关键证人拒绝出庭或出庭拒绝作证后其之前的书面证言证明效力不明确.....	11
第二节 确定关键证人出庭作证的案件及证人范围 .....	12
一、关键证人出庭作证的案件范围 .....	12
二、关键证人出庭作证的证人范围 .....	13
第三节 关键证人出庭作证的例外 .....	13

一、允许证人行使法定的拒证权 .....	13
二、证人客观不能出庭的情形 .....	14
三、对未出庭作证关键证人证言的认定 .....	14
<b>第四章 刑事诉讼关键证人出庭的规程设计 .....</b>	<b>16</b>
第一节 证人出庭作证的提出和决定 .....	16
第二节 证人出庭作证的通知 .....	16
第三节 证人到庭后的庭前准备 .....	17
第四节 证人作证程序 .....	18
第五节 证人退庭程序 .....	18
<b>第五章 刑事诉讼关键证人出庭的配套制度 .....</b>	<b>20</b>
第一节 证人出庭的保障难题 .....	20
一、证人出庭的顾虑 .....	20
二、新刑法在证人保护和经济补偿制度保障上存有不足 .....	20
第二节 健全证人保护制度 .....	21
一、证人保护的职能机构 .....	22
二、证人保护的措施 .....	22
三、证人保护的范畴 .....	23
四、适时制定证人保护法 .....	24
第三节 细化证人出庭作证经济补偿制度 .....	24
<b>第六章 刑事诉讼关键证人出庭制度下的司法挑战 .....</b>	<b>26</b>
第一节 改变执法司法理念 .....	26
第二节 进一步加强法治宣传教育 .....	27
<b>结    语 .....</b>	<b>28</b>
<b>参考文献 .....</b>	<b>29</b>

## CONTENTS

<b>Preface</b> .....	<b>1</b>
<b>Chapter 1 Putting forward the problem - whether criminal witnesses ought to appear to testify in court?</b> .....	<b>2</b>
<b>Subchapter 1 The status quo of criminal witnesses to appear in court in China</b> .....	<b>2</b>
<b>Subchapter 2 The cognition misunderstanding to the status quo of witnesses to appear in court</b> .....	<b>3</b>
Section 1 The misconceptions in understanding the law .....	3
Section 2 The misconceptions in understanding witnesses ' appearance rate .....	4
Section 3 The misconceptions in understanding the rules of litigation .....	4
<b>Subchapter 3 The real constraint to judicial resources in China</b> .....	<b>5</b>
<b>Chapter 2 The significance of the criminal litigation system of key witnesses to testify in court</b> .....	<b>6</b>
<b>Subchapter 1 The practical significance of the system of key witnesses to testify in court</b> .....	<b>6</b>
Section 1 Maintenance and implementation of legal justice .....	6
Section 2 Solve the contradiction between the witness to appear in court and the judicial resources .....	7
Section 3 Standard, unified judicial practice .....	7
<b>Subchapter 2 The theoretical significance of the system of key witnesses to testify in court</b> .....	<b>8</b>
Section 1 The pursuit of the unity of justice and efficiency .....	8
Section 2 Promoting the rule of law order construction .....	8
<b>Chapter 3 The scope and exception case analysis to appear in court in criminal litigation</b> .....	<b>10</b>
<b>Subchapter 1 The presentation of key witnesses in Criminal Litigation Law</b> .....	<b>10</b>

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Section 1 The conditions of the key witnesses is fuzzy, the word depends on the court's discretion .....	10
Section 2 The written testimony proved effectiveness is not clear when the key witnesses refuse to appear in court or refused to testify .....	11
<b>Subchapter 2 Identification of the cases and scope of the witnesses of key witnesses to testify in court.....</b>	<b>12</b>
Section 1 The case scope of key witnesses to testify.....	12
Section 2 The scope of the key witness .....	13
<b>Subchapter 3 Exceptions of key witnesses to testify in court .....</b>	<b>13</b>
Section 1 The right to refuse the witness .....	13
Section 2 The witness objective can't appear in court .....	14
Section 3 Have not appear the cognizance of key witness testimony .....	14
<b>Chapter 4 Procedure programming of key witnesses to appear in court in criminal litigation.....</b>	<b>16</b>
<b>Subchapter 1 Proposal and decision of witnesses to testify in court.....</b>	<b>16</b>
<b>Subchapter 2 Notification of witnesses to testify in court .....</b>	<b>16</b>
<b>Subchapter 3 Preparation of witnesses to enter the back court .....</b>	<b>17</b>
<b>Subchapter 4 The program of witnesses to testify .....</b>	<b>18</b>
<b>Subchapter 5 The leaving program of witnesses.....</b>	<b>18</b>
<b>Chapter 5 The supporting systems of key witnesses to testify in court .....</b>	<b>20</b>
<b>Subchapter 1 Security of attendance of witness.....</b>	<b>20</b>
Section 1 Concerns to appear in court .....	20
Section 2 The new criminal procedural law in the witness protection and economic compensation system security is poor .....	20
<b>Subchapter 2 To perfect the system of witness protection.....</b>	<b>21</b>
Section 1 The function of witness protection agencies.....	22

Section 2 The measures of witness protection.....	22
Section 3 The scope of witness protection .....	23
Section 4 Timely formulate the witness protection law .....	24
<b>Subchapter 3 To refine the economic compensation system of witnesses to testify in court.....</b>	<b>24</b>
<b>Chapter 6 Judicial challenges under the criminal litigation system of key witnesses to testify in court.....</b>	<b>26</b>
Subchapter 1 To change law enforcement and judicial philosophy.....	26
Subchapter 2 To further strengthen law publicity and education.....	27
<b>Conclusion.....</b>	<b>28</b>
<b>Bibliography.....</b>	<b>29</b>

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